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Letter dated 30 July 2012 from the Ombudsperson addressed to the President of the Security Council

I have the honour to submit herewith the fourth report of the Office of the Ombudsperson, pursuant to paragraph 16 (c) of annex II to Security Council resolution 1989 (2011), according to which the Ombudsperson shall submit biannual reports to the Council summarizing her activities. The report describes the activities carried out by the Office of the Ombudsperson during the six-month period since the issuance of the previous report, from 21 January to 20 July 2012.

I would appreciate it if the present letter and the report were brought to the attention of members of the Security Council and issued as a document of the Council.

(*Signed*) Kimberly **Prost**
Ombudsperson

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Report of the Office of the Ombudsperson pursuant to Security Council resolution 1989 (2011)

I. Background

1. The present report provides an update on the activities undertaken by the Office of the Ombudsperson since the issuance of the third report of the Office (S/2012/49), from 21 January to 20 July 2012.

II. Summary of activities: delisting cases

General

2. The primary activities of the Office of the Ombudsperson during the six-month period covered by the present report have related to the delisting requests submitted by individuals and entities.

3. Nine new cases were submitted to the Office of the Ombudsperson in the current reporting period,[1] bringing the total number of delisting petitions submitted since the establishment of the Office to 30 as at 20 July 2012. All of these were accepted and are currently at various stages of the process provided for in annex II to resolution 1989 (2011). Unless requested by the petitioner, all names remain confidential while under consideration and remain so in the event of the denial of the request or the withdrawal of the petition.

4. In total, 19 comprehensive reports have been submitted to the Committee since the Office was established, 8 of them during the current reporting period. The Ombudsperson has appeared before the Committee on seven occasions during the reporting period to present reports on 11 cases.

5. Since the issuance of the third report, 11 individuals[2] and 19 entities[3,4,5] have been delisted.[6] Seventeen of these entities were in a petition submitted by Ahmed

[1] Two cases were submitted as repeat petitions and were accepted on the basis that new information had been presented.

[2] Ahmed Ali Nur Jim'ale, Mondher ben Mohsen ben Ali al-Baazaoui, Sa'd Abdullah Hussein al-Sharif, Fethi Ben al-Rebei Absha M'hasri, Mounir Ben Habib Ben al-Taher Jarraya, Kamal ben Mohamed ben Ahmed Darraji, Ibrahim Abdul Salam Mohamed Boyasseer, Rachid Fettar, Chabaane ben Mohamed ben Mohamed al-Trabelsi, Saad Rashed Mohammed al-Faqih and Ali Mohamed el Heit.

[3] Al Baraka Exchange, LLC, Barakaat Telecommunications Co. Somalia, Ltd., Barakaat Bank of Somalia, Barako Trading Company, LLC, Al-Barakaat, Al-Barakaat Bank, Al-Barakaat Bank of Somalia, Al-Barakat Finance Group, Al-Barakat Financial Holding Co., Al-Barakat Global Telecommunications, Al-Barakat Group of Companies Somalia Limited, Al-Barakat International, Al-Barakat Investments, Barakaat Group of Companies, Barakaat Red Sea Telecommunications, Barakat International Companies, Barakat Telecommunications Company Limited and Movement for Reform in Arabia.

[4] Ahmed Ali Nur Jim'ale and 23 "Barakaat" entities were the subject of one petition. Six entities had been delisted during the previous reporting period, while the individual and the 17 remaining entities were delisting during the present period.

[5] Saad Rashed Mohammed al-Faqih and Movement for Reform in Arabia were considered as one request.

[6] In the case of Fondation Secours Mondial, it was referenced in the list only as an alias of Global Relief Foundation (QE.G.91.02). The Global Relief Foundation entry was amended to remove Fondation Secours Mondial as an alias.

Ali Nur Jim'ale and 23 entities. No delisting requests have been refused or withdrawn since the third report. Cumulatively, since the Office was founded, 19 cases have been completed, 16 individuals and 24 entities have been delisted, one entity has been removed as an alias of a listed entity, one delisting request has been refused and one petition has been withdrawn. A description of the status of all of the cases, as of the date of the present report, is contained in the annex to the present report.

6. Eight of the nine requests submitted to the Office during the reporting period were made by individuals alone, while one was by an entity alone. Four of the eight individuals are represented by counsel. In total, 25 of the 30 cases submitted to the Office since its establishment have been brought by individuals alone, two by an individual together with one or more entities and three by entities alone. In 21 of the 30 cases, the petitioner is/was assisted by legal counsel.

7. Since the issuance of the third report, the Ombudsperson has also worked on the new and pending requests for which comprehensive reports have yet to be completed. This has included circulating requests to relevant States and following up with their representatives, sometimes on multiple occasions. She has consulted with the Analytical Support and Sanctions Monitoring Team and conducted independent research, extensively in some cases, in order to gather relevant information.

Gathering of information from States

8. In the nine cases submitted to the Ombudsperson since the issuance of the third report, 31 requests for information have been sent so far, to 19 States. In the eight cases where a comprehensive report has been submitted to the Committee during the reporting period, responses have been received from 12 of the 15 States contacted. Some States provided multiple responses. In addition, some Committee members provided information in response to the general circulation of a petition. Importantly, in the same eight cases, the designating States and States of residence all provided responses.

9. In all eight cases where comprehensive reports have been submitted to the Committee during the reporting period, the Ombudsperson has asked questions of relevant States. On five occasions she has met with officials in capitals to gather information on specific cases directly.

Dialogue with the petitioner

10. During the reporting period, the Ombudsperson continued to ask questions of the petitioner in each of the cases that had reached or advanced through the dialogue phase. The petitioner responded in all cases with respect to which dialogue had been completed. This exchange took various forms, depending on the nature of the case, including e-mail exchanges and telephone discussions. Noting the Security Council preference for meetings with petitioners,[7] the Ombudsperson travelled to meet with

[7] Paragraph 6 (c) of annex II to Security Council resolution 1989 (2011) states that the Ombudsperson "should meet with the petitioner, to the extent possible".

six petitioners for a face-to-face interview.[8] Questions to the petitioners have included matters raised by States and the Monitoring Team.

11. Exchanges with the petitioner in the dialogue phase continue to be vital to the effectiveness of the process. They provide the Ombudsperson with clearer insight as to the facts and underlying circumstances of the case and allow for assessments of credibility. At the same time, they provide an important mechanism through which the petitioner can respond to the case and provide information that ultimately will be reflected in the report presented to the Committee.

Access to classified/confidential information

12. The challenges related to access to classified/confidential information remain pressing and significant. Importantly, since the issuance of the third report, the Office of the Ombudsperson has made additional arrangements for access to classified/confidential information with five States: Australia, France, Germany, Liechtenstein and Portugal. In addition, the Office has signed its first formal agreement with a State, namely Austria. Together with the existing arrangements (with Belgium, Costa Rica, New Zealand, Switzerland and the United Kingdom of Great Britain and Northern Ireland), this brings the total number of agreements or arrangements to 11. Also during the reporting period, the United States of America expressed willingness, and demonstrated an ability, to share confidential information on an ad hoc basis.

13. However, further progress on expanding the list — particularly to other States that are often implicated in the delisting petitions — is urgently needed. While efforts continue to be made to find practical solutions in the interim, lack of access to confidential/classified information has been a concern in at least four recent cases.

14. While the Ombudsperson has been pursuing this issue with a number of States, the current resource constraints have limited efforts in this regard.

III. Summary of activities: development of the Office of the Ombudsperson

General

15. Activities to further develop and strengthen the Office of the Ombudsperson were considerably constrained in the reporting period as a result of the increased caseload and the need to focus limited resources on the core functions of the Office. Nonetheless, efforts continued to be made in this respect to the extent possible.

Outreach and publicizing of the Office

16. The Ombudsperson described the work of her office at the European Union-United Nations seminar on sanctions held in New York from 28 to 30 March 2012. On 29 March, she gave a briefing on the same topic to interested States Members of

[8] In one case the petitioner declined to meet for an interview though questions were posed and answers provided through legal counsel. In another case, the information provided in the petition and through a written exchange of questions and answers was considered sufficient, such that an in-person interview was considered unnecessary.

the United Nations. She participated in a workshop entitled "The Security Council, sanctions and the rule of law" held on 31 May at the Permanent Mission of Australia to the United Nations. The workshop was part of a project on strengthening the rule of law through the Security Council, sponsored by the Australian Research Council in collaboration with the Australian Civil-Military Centre[9] and the Australian National University. The Ombudsperson also took part in a seminar on "Smart sanctions and the rule of law" held at New York University from 21 to 23 June. On 27 June, the Ombudsperson spoke at a dinner debate on the future of targeted sanctions at the Permanent Mission of Germany to the United Nations.

Interaction with the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, and with the Monitoring Team

17. Since 21 January 2012, the Ombudsperson has appeared on seven occasions before the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals: on 24 January 2012 to present the comprehensive report in the case of Fondation Secours Mondial (amended; formerly an alias of QE.G.91.02); on 1 March 2012 to present the comprehensive reports in the cases of Ibrahim Abdul Salam Mohamed Boyasseer (delisted; formerly QI.B.267.09) and Mondher ben Mohsen ben Ali al-Baazaoui (delisted; formerly QI.A.94.03); on 3 April 2012 to present the comprehensive reports in the cases of Kamal ben Mohamed ben Ahmed Darraji (delisted; formerly QI.D.174.04) and Sa'd Abdullah Hussein Al-Sharif (delisted; formerly QI.A.5.01); on 17 April 2012 to present the comprehensive report in the cases of Saad Rashed Mohammed al-Faqih (delisted; formerly QI.A.181.04) and Movement for Reform in Arabia (delisted; formerly QE.M.120.05), Fethi ben al-Rebei Absha Mnasri (delisted; formerly QI.M.102.03) and Mounir ben Habib ben al-Taher Jarraya (delisted; formerly QI.J.100.03); on 1 May 2012 to present additional information on a case while it was still under consideration; on 20 June 2012 to present the comprehensive reports in the cases of Rachid Fettar (delisted; formerly QI.F.97.03) and Chabaane ben Mohamed ben Mohamed al-Trabelsi (delisted; formerly QI.A.178.04); and on 3 July to present the comprehensive report in the case of Ali Mohamed el Heit (delisted; formerly QI.E.159.04). The Ombudsperson has also provided a number of written updates to the Committee in relation to various cases as they progress through each phase.

18. The Ombudsperson has met and communicated with the Coordinator and members of the Monitoring Team on numerous occasions. On an operational level there is ongoing communication with various experts in the Monitoring Team, as appropriate to particular cases. The Monitoring Team continues to provide the Ombudsperson with relevant information in individual cases in accordance with paragraph 3 of annex II to resolution 1989 (2011) and has on several occasions proposed questions for the petitioners. The Monitoring Team has also provided assistance with research and specific questions which have arisen in the consideration of particular delisting petitions.

[9] The Centre, formally designated Asia Pacific Civil-Military Centre of Excellence, is an entity of the Government of Australia.

Liaison with States, intergovernmental organizations, United Nations bodies and non-governmental organizations

19. The Ombudsperson has continued her interaction with States over the past six months, placing particular emphasis on States of relevance to the delisting petitions that have been presented. She also engaged with several State experts on counter-terrorism. On the question of agreements and arrangements to access classified/confidential information, the Ombudsperson had further discussions with several States and has continued to follow up on existing requests. The Ombudsperson also continued to meet with the informal group of like-minded States on targeted sanctions[10] and with representatives of the European Union. In addition, the Ombudsperson took advantage of operational trips in order to consult with relevant authorities in the capitals of various States.

20. Similarly, the Ombudsperson continued to liaise with representatives of the Counter-Terrorism Implementation Task Force and the Counter-Terrorism Committee Executive Directorate. She met on two occasions with Ben Emmerson, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, to discuss the work of her office. The Ombudsperson and Special Rapporteur continue to exchange information of relevance to both of their mandates.

21. To the extent possible given resource constraints, the Ombudsperson sustained efforts to build relationships and work with civil society and non-governmental organizations, particularly those active in the field of human rights and sanctions. To this end, the Ombudsperson interacted with academics, students and representatives of non-governmental organizations and civil society.

Procedures and research

22. The Ombudsperson continued to follow developments in relevant legal cases and to review press material and academic articles pertinent to the work of the office. She took available opportunities to discuss the broad range of issues related to the delisting process with judges of national, regional and international courts, as well as prosecutors and private lawyers, including representatives of the International Bar Association and the International Association of Prosecutors. The Ombudsperson also discussed general legal issues of relevance with counsel in the Office of Legal Affairs and with experts from, inter alia, the Counter-Terrorism Committee Executive Directorate and the Monitoring Team.

Website

23. The Ombudsperson continued to revise, develop and update the website of the Office (www.un.org/en/sc/ombudsperson/).

[10] Comprising Austria, Belgium, Costa Rica, Denmark, Germany, Finland, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland.

IV. Other activities

Notifications of listing

24. In accordance with paragraph 16 (b) of annex II to resolution 1989 (2011), when an individual or entity is added to the list and relevant States have been notified, the Ombudsperson is to send a notification directly to that individual or entity if there is a known address.

25. In the six months since the issuance of the third report, 10 entries have been added to the Al-Qaida sanctions list. Each of those listings was considered with reference to the question of notification. With respect to six of the newly listed persons or entities, notification letters were sent to possible addresses based on available information in the list entry. In the four remaining cases, no address was available or the address information provided was insufficiently detailed for there to be any reasonable prospect of the notification reaching the addressee.

Miscellaneous matters

26. The Ombudsperson received various requests for information about the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) and provided public material in response to such requests, as appropriate. This included assistance to States seeking information or clarifications, as well as requests made by individuals.

V. Future work

27. The priorities of the Ombudsperson remain consistent. The paramount activity will continue to be that related to the delisting requests. While it is difficult to anticipate the future caseload with any certainty, it is reasonable to assume that the Office of the Ombudsperson will receive approximately 10 requests in the next six-month period and that 10 cases will be active at the end of the next reporting period.

28. As mentioned above, the second matter of priority will continue to be the development of arrangements or agreements for access to classified/confidential information. Resources permitting, the Ombudsperson will continue to publicize the work of the Office and to conduct outreach and liaison activities.

VI. Observations and conclusions

29. The Office of the Ombudsperson has been operational for approximately two years. The revised procedure set out in resolution 1989 (2011) has been applicable for one year, with several cases having been decided in accordance with that procedure. On the basis of this experience it is now possible to better assess the effectiveness and fairness of the process and to highlight any challenges which remain.

Fair process achievements

30. In the cases completed to date, the Ombudsperson process has operated in conformity with the fundamental principles of fair process which it was designed to

address. The individual petitioners have been informed of the case against them through the combined effect of the information-gathering and dialogue phases. The information gathered by the Ombudsperson, subject to any confidentiality restrictions, has been presented to the petitioner. Each petitioner has also had an opportunity to respond to that case and be heard by the decision maker through the information imparted to the Ombudsperson in the dialogue phase and subsequently captured in the comprehensive report. In accordance with resolution 1989 (2011), the Ombudsperson and the Committee continue to assess each case on the information made available to the Ombudsperson, and that information also forms the basis for the recommendation of the Ombudsperson. In this reporting period, the Committee's decisions have once again been consistent with those recommendations and to date, no State has requested that a case be referred to the Security Council.

31. The experience with the individual delisting petitions in this reporting period has clearly demonstrated that the Ombudsperson procedure, as currently formulated by the Security Council, is a robust one with significant protections which enshrine the fundamental principles of fairness. Most notably, the detailed nature of the comprehensive report, in combination with the requirement for a consensus decision to overturn a recommendation by the Ombudsperson, has proven to be an essential safeguard for those principles. It ensures that, during the deliberation phase, the focus remains on the underlying information in the case and the reasons for the decision which the Committee will ultimately take.

32. In sum, through the Ombudsperson process so far, each petitioner has been informed and had an opportunity to be heard; the underlying information has been reviewed and assessed by an objective third party culminating in a recommendation; and the decision taken has been premised on the information gathered and the case as disclosed to the petitioner.

Cooperation of States

33. State cooperation remains very strong. However, some of the problems previously identified continue to impede the process. In particular, in the period under review there has been a slight increase in cases of non-response from States, although none has involved a State of residence or designating State. Nonetheless, the absence of responses from some States is a matter of concern.

34. Access to detailed information with sufficient particularity remains a serious problem, to the detriment of the effectiveness of the process in many respects. Notably, the test applied in the Ombudsperson process is whether there is sufficient information to provide a reasonable and credible basis for the listing. In the absence of particulars, it is difficult to assess the sufficiency and reasonableness of the information or even in some instances to accord any weight to it. Also, specificity and detail are key indicia of credibility and are of particular importance in this context given that the original sources of the information, in many instances, cannot be disclosed. The absence of detail also impairs the ability of the Ombudsperson to have a frank dialogue with the petitioner and to properly assess the responses and information provided. It remains the case that many of the challenges faced in this respect relate to the question of classified/confidential material, again highlighting the importance of reaching agreements with States on access to such material. In addition, some States have demonstrated reluctance to respond to specific questions

posed or to give access to their operational agencies even when the issue of confidentiality does not arise.

35. The most significant problem, however, which has become more acute in this reporting period, is the timeliness of the responses provided by States, including the key States in individual cases. On several occasions, responses have been submitted well into the dialogue phase and, in some instances, even after the initial two-month deadline for that phase has expired.

36. The effectiveness of the detailed process elaborated by the Security Council in annex II to resolution 1989 (2011) is heavily dependent on the timelines applicable to the various stages of the procedure. Furthermore, experience has demonstrated very clearly that the deadlines fixed by the Security Council — applicable to States, the Ombudsperson and the Committee — are fundamental to the overall fairness of the process. This is especially the case with the periods prescribed for the submission of information by States. Key principles of fairness dictate that the petitioner be informed of the case against him or her and have an opportunity to respond to the same and be heard by the decision maker. When information is submitted outside of the prescribed information-gathering period, it is prejudicial to the petitioner in that the time period for disclosing and discussing the information and for the preparation of a response to it is shortened, sometimes considerably. It also makes it difficult to ensure that the information is properly reflected and analysed in the comprehensive report. Finally, if it is provided at a very late stage, especially after the preparation of the comprehensive report, it has the potential to vitiate the fairness of the overall process. For all these reasons, and given that the period for information-gathering has been extended and is now quite lengthy, it is important that States meet the deadlines for information-gathering set by the Security Council.

37. Given the critical importance of timely cooperation by States, it would be helpful if consideration were given to further emphasizing the importance of State compliance with information-gathering requirements within the established deadlines.

Transparency of the process

38. In resolution 1989 (2011), the Security Council set out in detail the process by which requests for delisting are to be considered by the Committee with the assistance of the Ombudsperson. This includes clear timelines and a delineation of the three means by which the ultimate decision with respect to any delisting petition will be taken: by the Committee in accordance with the recommendation of the Ombudsperson, through a consensus decision contrary to the recommendation, or by a Security Council vote. In so doing, the Security Council significantly enhanced the fairness of the process by allowing for a transparent procedure whose component steps and their timing are apparent to the petitioners and to the public.

39. The Ombudsperson further contributes to transparency by disclosing information as far as possible[11] and advising the petitioner and interested States as

[11] The Ombudsperson will disclose the information gathered in the case to the petitioner except for any material subject to confidentiality constraints. The Ombudsperson will also generally disclose the description of the petitioner's case which is to be incorporated into the comprehensive report to ensure that the petitioner is satisfied with it.

to the progress of the delisting petition at each stage up to the consideration of the comprehensive report by the Committee. However, under the current mandate the Ombudsperson is constrained in terms of the information which can be disclosed to the petitioner, to an interested State that is not a member of the Committee or to the public. Most notably, the comprehensive report is confidential to the Committee, and this includes even the recommendation made by the Ombudsperson in the report. Moreover, resolution 1989 (2011) provides no basis for the Ombudsperson to update the petitioner and relevant States about the progress of the case once it reaches the Committee for consideration and decision, other than with respect to her own activities.[12] Similarly, once a decision has been taken on a petition, it is not clear whether the Ombudsperson can make any public disclosure as to which of the three options was employed in reaching that conclusion.

40. A case can certainly be made for more open access to the comprehensive reports of the Ombudsperson or portions thereof. The Monitoring Team, for example, has recommended more transparency for these reports and has advanced a well-grounded argument in support of its recommendation.[13] However, the most pressing issue at the moment relates specifically to the inability of the Ombudsperson to disclose the recommendation made, and the next steps taken in the specific case, to the petitioner and to an interested State that is not a Committee member. Further, the absence of full public transparency as to how the options in the resolution are being applied in specific cases is equally problematic.

41. These constraints unnecessarily impair the transparency of the Ombudsperson and Committee processes and detract from their credibility and fairness. Further, the underlying rationale for these restrictions is not clear, as they do not relate to the sensitive issue of information provided or positions taken by individual States on the request. Moreover, confidentiality is somewhat misplaced in this context given that the timelines applicable in accordance with resolution 1989 (2011) will be apparent to the petitioner, interested States and even the general public, for the most part.[14] In most instances, individuals and States will be able to deduce what the recommendation was, whether the "trigger mechanism" applied or a consensus decision to overturn was reached or if the matter was referred to the Security Council, simply as a result of the time it takes for the decision.

42. The decision ultimately taken by the Committee or the Security Council with respect to a delisting petition directly affects the rights of the petitioner. It is essential for fairness that he or she be made aware of the particulars of the process in his or her case as it progresses. Similarly, a designating State or State of residence which is not a member of the Committee but has a direct interest in the outcome should have access to the same information and within the same time frame. And for the overall transparency, credibility and fairness of the process, the manner in which the decision was taken in an individual case should be publicly disclosed at the end of the process. Consistent with the important steps taken by the Security Council to make clear the applicable procedure for delisting petitions generally, it would seem

[12] The Ombudsperson does advise petitioners and relevant States when she is to appear before the Committee to present a comprehensive report.

[13] See, for example, S/2011/245, para. 38.

[14] It will not be evident when the 30-day time period for consideration will begin since it will not be generally known when translations are delivered.

reasonable to remove any secrecy as to how that process is applied in individual cases.

43. For all of these reasons, it would be useful if consideration were given to empowering the Ombudsperson to disclose the recommendation made in the comprehensive report to the petitioner and interested States which are not members of the Committee, once the Committee has concluded its consideration of the case. The Ombudsperson should also be mandated to keep the petitioner and States informed of the steps taken subsequently, including the timing of the circulation of the request under the Committee's no-objection procedure[15] and the particular method by which the decision is ultimately made. Further, at the conclusion of the case, the Ombudsperson should be permitted to publicly identify in each individual case whether the decision to retain or delist was based on the recommendation of the Ombudsperson, a consensus decision by the Committee to retain the listing or a Security Council referral and vote.

Reasons for decision

44. The importance of the Committee providing reasons for the decisions taken cannot be overstated. Such reasons demonstrate the fair and considered nature of the decision-making process and provide guidance to the Ombudsperson for subsequent delisting cases. Moreover, as these reasons are communicated to the petitioner, he or she is made aware of the basis of the decision and thus the transparency of the proceedings is considerably enhanced. This principle has been recognized in resolution 1989 (2011) insofar as it requires that the Committee provide reasons for rejecting a delisting petition.[16] In practice the Committee has also made efforts to provide reasons for its decision when delisting is granted, although a significant period of time can elapse between the decision and the provision of the reasons. Given this existing practice and the importance of reasons to the overall fairness of the process, it would be helpful if consideration were given to extending the current obligation and providing that the Committee give reasons in a timely manner for its decision in all cases.

Non-disclosure of the identity of designating States

45. As indicated in the third report, paragraph 29 of resolution 1989 (2011), by which the Security Council strongly urges relevant States to consent to the disclosure of their identity as designating States, has brought about some positive changes. However, it remains both difficult and time-consuming to meet the requirement that consent be sought.[17] Therefore, it would be useful if the issue of disclosure of the identity of designating States could be reconsidered with a view to allowing for such information to be provided where necessary to the fairness of the process, without the requirement of obtaining the consent of the relevant States.

[15] The fact that the request will be circulated under the no-objection procedure in the case of a recommendation for delisting is publicly known by virtue of paragraph 7 (ee) of the guidelines of the Committee for the conduct of its work, found at www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf.

[16] Paragraph 13 of annex II. A similar requirement is in paragraph 33, in the case of a Committee member objecting to delisting.

[17] See S/2012/49, paras. 48 and 49.

Mandate for follow-up to delisting/facilitating requests for exemptions

46. Practice has once again clearly highlighted the importance of empowering the Office of the Ombudsperson to follow up on cases of delisted persons or entities who continue to face restrictions with respect to the movement of or access to funds or in relation to travel. In several cases in this reporting period, individuals delisted by the Committee through the Ombudsperson process have reverted to the Ombudsperson subsequently with claims of continued application of sanctions measures after the delisting. To date, it has been possible to address and respond to such concerns only on the basis of purely informal discussions with States. The implications in terms of fairness for individuals and entities facing such unjustified restrictions are obvious. A far more effective response to such situations would be possible if the Ombudsperson were specifically mandated to follow up on these cases with relevant States or otherwise, as might be necessary.

47. Even more pressing is the question of the access of individuals and entities to the exemptions that the Security Council has prescribed in the context of the sanction measures.[18] During the reporting period, some petitioners have sought assistance from the Ombudsperson in seeking exemptions from the Committee; however, such assistance is not possible under the existing mandate. As was the case historically with delisting requests, there is no recourse available for an individual or entity to pursue such an exemption from the Committee, other than through a State. The practical effect is that many individuals, particularly those located in States with limited resources or unfamiliar with the Committee process, have no access to the humanitarian exemptions since they are unable to present their claims to the Committee for consideration.

48. For these reasons, and those expressed in previous reports,[19] it would be helpful if consideration were given to mandating the Office of the Ombudsperson to follow up on claims of continued application of sanctions measures despite delisting and to directly transmit exemption requests from individuals and entities to the Committee for its consideration.

49. During the period under review, one additional issue has arisen with respect to requests for exemptions. In two instances, consideration had to be given to conducting the petitioner interview in a location other than the State of residence, either because of logistical challenges[20] or security concerns. In such instances, it would significantly facilitate the process if the Ombudsperson were able to make a request to the Committee for the travel exemption without the need for a State to present it. While of course the relevant States would still need to provide consent and the ultimate decision on the waiver would be solely for the Committee, considerable time and effort could be saved if the request could be made directly by the Ombudsperson. Therefore, it would be useful if consideration were given to allowing the Ombudsperson to present a request for a travel exemption in order to facilitate the dialogue phase of the process.

[18] See paragraph 1 of resolution 1452 (2002) and paragraph 1 (b) of resolution 1989 (2011).

[19] See S/2012/49, paras. 50-52, and S/2011/447, paras. 47-49.

[20] In one case the substantial documentation of relevance to the case and needed for the interview was not easily accessible in the State of residence.

Translation/administrative issues

50. As discussed in the third report (see S/2012/49, paras. 53-57), the general guidelines concerning word limits for translation, applicable to parliamentary documents in the United Nations system, are being applied to the comprehensive reports of the Ombudsperson. As a matter of principle, this limitation infringes on the independence of the Ombudsperson. The problem is further exacerbated by the fact that translation is a prerequisite for consideration of the comprehensive reports by the Committee, and thus these word limits impose a very real restriction on the content of the reports. Given that the comprehensive reports are fundamental to the fairness of the Ombudsperson process, this raises a serious concern. While efforts are made to limit the length of the comprehensive reports as much as possible, in some instances the underlying material and case issues are such that this is not feasible.

51. As previously noted (see S/2012/49, para. 54), resolution 1989 (2011) mandates that the 30-day time period for the Committee's consideration of the delisting request commences 15 days after the comprehensive report has been submitted to the Committee in all official languages of the United Nations. While this 30-day time constraint contributes significantly to the expeditiousness and fairness of the process, significant delays are still possible in the decision-making phase owing to the difficulties of obtaining translations in a timely manner. In addition, in terms of the transparency of the process, this formulation means that it is not clear even to the petitioner when the 30-day period for consideration of the report by the Committee begins. Given the strict and clear deadlines applicable to all other components of the process and with respect to the participants — petitioner, Ombudsperson, States and the Committee — this uncertainty, and the potential for lengthy delays arising from circumstances outside the control of the Committee, is a regrettable obstacle to the overall fairness and efficacy of the procedure.

52. At the same time, as reflected in resolution 1989 (2011), it is evident that translation of the comprehensive reports into all of the official languages is an important component of fair process to ensure that States have an opportunity to fully and properly review the material. However, in some circumstances, the balancing of the competing interests involved may require the prioritization of some parts of the reports for immediate translation or some other similar measures to ensure that a case can still be considered by the Committee on a timely basis. For this reason, it would be useful if control over these issues rested solely with the Committee, the body best placed to make determinations on these questions. To that end, without altering the important 30-day time limit, it would be helpful if consideration were given to amending annex II so as to give the Committee the flexibility to determine when the requirements for translation have been met sufficiently to allow for consideration of the delisting petition and the comprehensive report by the Committee.

Resources

53. Resource needs identified in the previous reports of the Ombudsperson, and recognized by the Security Council in paragraph 24 of resolution 1989 (2011), have been partially addressed. In line with the request of the Secretary-General, the General Assembly has approved the establishment of two dedicated positions to

strengthen the Office of the Ombudsperson: a professional officer (P-4) and an administrative assistant. The administrative assistant position has been filled. While the competition process for the staffing of the P-4 post is ongoing, absent unexpected developments, it should be completed shortly. This is of critical importance since, without the deployment of this additional resource, it will not be possible for the Ombudsperson to continue to fully meet the mandate accorded to her by the Security Council.

54. The issue of funds for translation of material received from or to be transmitted to petitioners, or material submitted by States, which is not in one of the six official languages of the United Nations remains a pressing problem. There have been several instances in this reporting period where material for transmission to or sent by a petitioner, or critical to a proper understanding of the case, has required translation.

55. A related problem has arisen because of the need for interpretation in the course of the dialogue phase. As discussed previously, the Security Council encourages the Ombudsperson to meet with petitioners to the extent possible. In the current reporting period, six interviews have been conducted with petitioners and this "face-to-face" process has proven to be extremely helpful to the petitioner and important for the comprehensiveness of the report. Members of the Committee continue to comment on the necessity for such interviews. However, the interviews can only be effective if conducted in a language understood by the petitioner, which in several instances meant that interpretation assistance was needed.

56. To date, no specific funds have been sought or allocated for either of these purposes, creating significant challenges to the effective implementation of the Ombudsperson process.[21] While informal solutions have been found to address the problem on a case-by-case basis, this approach is not sustainable in the long term. Efforts are being made to secure funding for translation/interpretation for the next budget cycle. Absent such resources, there is a danger that the overall fairness and efficacy of the process will be negatively affected.

Conclusion

57. In summary, despite the resource constraints and the specific challenges outlined above, during this reporting period the Office of the Ombudsperson has continued to fulfil the mandate accorded to it. State cooperation remains strong and efforts are ongoing to overcome some of the most difficult problems, including the question of access to confidential/classified information. Most significantly, listed persons and entities are making use of the mechanism established by the Security Council by presenting delisting petitions. These petitions are being addressed through the Ombudsperson process and completed within the prescribed time frames, in accordance with the fundamental principles of fair process as detailed above.

[21] In the third report there was reference to funds having been allocated for this purpose in the 2012 budget, but this was subsequently determined to be incorrect information.

Annex

Status of cases

Case 1, one individual (Status: denied)

Date	*Description*
28 July 2010	Transmission of case 1 to the Security Council Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities
28 February 2011	Comprehensive report submitted to the Committee
10 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision
1 September 2011	Formal notification to petitioner setting out reasons

Case 2, Safet Ekrem Durguti (Status: delisted)

Date	*Description*
30 September 2010	Transmission of case 2 to the Committee
26 April 2011	Comprehensive report submitted to the Committee
31 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision to delist
12 August 2011	Formal notification to petitioner setting out reasons

Case 3, one entity (Status: delisting request withdrawn by petitioner)

Date	*Description*
3 November 2010	Transmission of case 3 to the Committee
14 June 2011	Comprehensive report submitted to the Committee
26 July 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
2 August 2011	Withdrawal of petition

Case 4, Shafiq ben Mohamed ben Mohamed al-Ayadi (Status: delisted)

Date	*Description*
6 December 2010	Transmission of case 4 to the Committee
29 June 2011	Comprehensive report submitted to the Committee
26 July 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
17 October 2011	Committee decision to delist
8 November 2011	Formal notification to petitioner setting out reasons

Case 5, Tarek ben al-Bechir ben Amara al-Charaabi (Status: delisted)

Date	*Description*
30 December 2010	Transmission of case 5 to the Committee
26 April 2011	Comprehensive report submitted to the Committee
31 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision to delist
12 August 2011	Formal notification to petitioner setting out reasons

Case 6, Abdul Latif Saleh (Status: delisted)

Date	*Description*
14 January 2011	Transmission of case 6 to the Committee
17 June 2011	Comprehensive report submitted to the Committee
26 July 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
19 August 2011	Committee decision to delist
8 November 2011	Formal notification to petitioner setting out reasons

Case 7, Abu Sufian al-Salamabi Muhammed Ahmed Abd al-Razziq (Abousfian Abdelrazik) (Status: delisted)

Date	*Description*
28 January 2011	Transmission of case 7 to the Committee
23 September 2011	Comprehensive report submitted to the Committee
15 November 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
30 November 2011	Committee decision to delist
13 February 2012	Formal notification to petitioner setting out reasons

Case 8, Ahmed Ali Nur Jim'ale and 23 entities[a] (Status: delisted)

Date	*Description*
17 March 2011	Transmission of case 8 to the Committee
23 September 2011	Comprehensive report submitted to the Committee
13 December 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
27 December 2011	Committee decision to delist six entities
21 February 2012	Committee decision to delist one individual and 17 entities
8 June 2012	Formal notification to petitioner setting out reasons

[a] Barakaat North America, Inc., Barakat Computer Consulting, Barakat Consulting Group, Barakat Global Telephone Company, Barakat Post Express, Barakat Refreshment Company, Al Baraka Exchange, LLC, Barakaat Telecommunications Co. Somalia, Ltd., Barakaat Bank of Somalia, Barako Trading Company, LLC, Al-Barakaat, Al-Barakaat Bank, Al-Barakaat Bank of Somalia, Al-Barakat Finance Group, Al-Barakat Financial Holding Co., Al-Barakat Global Telecommunications, Al-Barakat Group of Companies Somalia Limited, Al-Barakat International, Al-Barakat Investments, Barakaat Group of Companies, Barakaat Red Sea Telecommunications, Barakat International Companies and Barakat Telecommunications Company Limited.

Case 9, Saad Rashed Mohammed al-Faqih and Movement for Reform in Arabia (Status: delisted)

Date	*Description*
19 April 2011	Transmission of case 9 to the Committee
21 February 2012	Comprehensive report submitted to the Committee
17 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
1 July 2012	Committee decision to delist

Case 10, Ibrahim Abdul Salam Mohamed Boyasseer (Status: delisted)

Date	*Description*
6 May 2011	Transmission of case 10 to the Committee
9 January 2012	Comprehensive report submitted to the Committee
1 March 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
8 May 2012	Committee decision to delist

Case 11, Mondher ben Mohsen ben Ali al-Baazaoui (Status: delisted)

Date	*Description*
1 June 2011	Transmission of case 11 to the Committee
19 January 2012	Comprehensive report submitted to the Committee
1 March 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
30 March 2012	Committee decision to delist
10 July 2012	Formal notification to petitioner setting out reasons

Case 12, Kamal ben Mohamed ben Ahmed Darraji (Status: delisted)

Date	*Description*
30 June 2011	Transmission of case 12 to the Committee
28 February 2012	Comprehensive report submitted to the Committee
3 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
4 May 2012	Committee decision to delist

Case 13, Fondation Secours Mondial (Status: amended[b])

Date	*Description*
7 July 2011	Transmission of case 13 to the Committee
14 December 2011	Comprehensive report submitted to the Committee
24 January 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
17 February 2012	Committee decision to amend
9 July 2012	Formal notification to petitioner setting out reasons

Case 14, Sa'd Abdullah Hussein al-Sharif (Status: delisted)

Date	*Description*
20 July 2011	Transmission of case 14 to the Committee
29 February 2012	Comprehensive report submitted to the Committee
3 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
27 April 2012	Committee decision to delist
5 June 2012	Formal notification to petitioner setting out reasons

Case 15, Fethi ben al-Rebei Absha Mnasri (Status: delisted)

Date	*Description*
4 August 2011	Transmission of case 15 to the Committee
9 March 2012	Comprehensive report submitted to the Committee
17 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
2 May 2012	Committee decision to delist

[b] Amended to be remove Fondation Secours Mondial as an alias of Global Relief Foundation (QE.G.91.02).

Case 16, Mounir ben Habib ben al-Taher Jarraya (Status: delisted)

Date	*Description*
15 August 2011	Transmission of case 16 to the Committee
9 March 2012	Comprehensive report submitted to the Committee
17 April 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
2 May 2012	Committee decision to delist

Case 17, Rachid Fettar (Status: delisted)

Date	*Description*
26 September 2011	Transmission of case 17 to the Committee
27 April 2012	Comprehensive report submitted to the Committee
5 June 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
20 June 2012	Committee decision to delist

Case 18, Ali Mohamed el Heit (Status: delisted)

Date	*Description*
5 October 2011	Transmission of case 18 to the Committee
2 May 2012	Comprehensive report submitted to the Committee
3 July 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
19 July 2012	Committee decision to delist

Case 19, one individual (Status: Committee phase)

Date	*Description*
16 November 2011	Transmission of case 19 to the Committee
11 July 2012	Comprehensive report submitted to the Committee

Case 20, Chabaane ben Mohamed ben Mohamed al-Trabelsi (Status: delisted)

Date	*Description*
21 November 2011	Transmission of case 20 to the Committee
23 April 2012	Comprehensive report submitted to the Committee
5 June 2012	Presentation of the comprehensive report by the Ombudsperson to the Committee
20 June 2012	Committee decision to delist

Case 21, one individual (Status: dialogue phase)

Date	*Description*
3 January 2012	Transmission of case 21 to the Committee
18 September 2012	Deadline for the completion of the extended dialogue phase

Case 22, one individual (Status: dialogue phase)

Date	*Description*
6 February 2012	Transmission of case 22 to the Committee
6 August 2012	Deadline for the completion of the dialogue phase

Case 23, one individual (Status: dialogue phase)

Date	*Description*
23 February 2012	Transmission of case 23 to the Committee
27 August 2012	Deadline for the completion of the dialogue phase

Case 24, one individual (Status: dialogue phase)

Date	*Description*
28 February 2012	Transmission of case 24 to the Committee
12 September 2012	Deadline for the completion of the dialogue phase

Case 25, one individual (Status: dialogue phase)

Date	*Description*
28 February 2012	Transmission of case 25 to the Committee
29 August 2012	Deadline for the completion of the dialogue phase

Case 26, one individual (Status: information-gathering phase)

Date	*Description*
23 April 2012	Transmission of case 26 to the Committee
23 August 2012	Deadline for the completion of the information-gathering phase

Case 27, one individual (Status: information-gathering phase)

Date	*Description*
7 May 2012	Transmission of case 27 to the Committee
7 September 2012	Deadline for the completion of the information-gathering phase

Case 28, one individual (Status: information-gathering phase)

Date	*Description*
7 June 2012	Transmission of case 28 to the Committee
8 October 2012	Deadline for the completion of the information-gathering phase

Case 29, one individual (Status: information-gathering phase)

Date	*Description*
25 July 2012	Transmission of case 29 to the Committee
26 November 2012	Deadline for the completion of the information-gathering phase

Case 30, one entity (Status: information-gathering phase)

Date	*Description*
25 July 2012	Transmission of case 30 to the Committee
26 November 2012	Deadline for the completion of the information-gathering phase